

**From:** LERS, EOIR (EOIR)  
**To:** LERS, EOIR (EOIR); All of Judges (EOIR); BIA BOARD MEMBERS (EOIR); BIA ATTORNEYS (EOIR); All of CLAD (EOIR); All of OCIJ JLC (EOIR); BIA TEAM JLC; BIA TEAM P (EOIR); Alder Reid, Lauren (EOIR); Allen, Patricia M. (EOIR); Anderson, Jill (EOIR); Baptista, Christina (EOIR); Bauder, Melissa (EOIR); Berkeley, Nathan (EOIR); Brazill, Caitlin (EOIR); Burgie, Brea (EOIR); Burgus, Elizabeth (EOIR); Carr, Donna (EOIR); Cicchini, Daniel (EOIR); Cowles, Jon (EOIR); Curry, Michelle (EOIR); Evans, Brianna (EOIR); Grodin, Edward (EOIR); Hartman, Alexander (EOIR); Kaplan, Matthew (EOIR); King, Jean (EOIR); Korniluk, Artur (EOIR); Lang, Steven (EOIR); Lovejoy, Erin (EOIR); Martinez, Casey L. (EOIR); Noferi, Mark (EOIR); O'Hara, Shelley M. (EOIR); Park, Jeannie (EOIR); Powell, Karen B. (EOIR); Ramirez, Sergio (EOIR); Rimmer, Phillip (EOIR); Robbins, Laura (EOIR); Rodrigues, Paul A. (EOIR); Rodriguez, Bernardo (EOIR); Rothwarf, Marta (EOIR); Sanders, John W. (EOIR); Schaaf, Joseph R. (EOIR); Smith, Terry (EOIR); Stutman, Robin M. (EOIR); Swanwick, Daniel (EOIR); Taufa, Elizabeth (EOIR); Vayo, Elizabeth (EOIR)  
**Cc:** McHenry, James (EOIR); Reilly, Katherine (EOIR); Santoro, Christopher A (EOIR); Sheehey, Kate (EOIR); Moutinho, Deborah (EOIR); Adams, Amanda (EOIR); Pease, Jeffrey (EOIR); Morgan, Kenosha (EOIR); EOIR Library (EOIR)  
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## | EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

Office of Policy | Legal Education and  
Research Services Division

## | Policy & Case Law Bulletin

August 24, 2018

### Federal Agencies

DOJ

- [Former Nazi Labor Camp Guard Jakiw Palij Removed to Germany](#)

"The United States will never be a safe haven for those who have participated in atrocities, war crimes, and human rights abuses," said Attorney General Sessions. "Jakiw Palij lied about his Nazi past to immigrate to this country and then fraudulently become an American citizen. He had no right to citizenship or to even be in this country." The Justice Department—led by Eli Rosenbaum and the Human Rights and Special Prosecutions Section, formerly the Office of Special Investigations—successfully helped remove Jakiw Palij from the United States, as it has done with 67 other Nazis in the past. "I want to thank our partners at the State Department and the Department of Homeland Security for all of their hard work in removing this Nazi criminal from our country" added Attorney General Sessions.

- [Virtual Law Library Weekly Update — EOIR](#)

This update includes resources recently added to EOIR's internal or external Virtual Law Library, such as Federal Register Notices, country conditions information, and links to recently-updated immigration law publications. There are updates to country conditions information on Iran and Yemen.

DHS

- [Clarification of STEM OPT Extension Reporting Responsibilities and Training Obligations](#)
- USCIS is updating the [Optional Practical Training Extension for STEM Students \(STEM OPT\)](#) page of its website to clarify the reporting responsibilities for participating in the STEM OPT program.

DOS

- [DOS Updates 9 FAM](#)

DOS made updates to 9 FAM, including to section 402.11, revising guidance the definition of information media representatives, defines "journalistic information," and gives a

framework for evaluating applicants affiliated with "new media" platforms.

### Third Circuit

- [United States v. Mayo](#)

No. 16-4282, 2018 WL 3999884 (3d Cir. Aug. 22, 2018) (Crime of Violence; ACCA)

The Third Circuit vacated the district court's order concluding that aggravated assault under 18 Pa. Cons. Stat. § 2702(a)(1) is not a violent felony as defined in 18 U.S.C. § 924(e) (2)(B)(i) ("ACCA elements clause") (analogous to 18 U.S.C. § 16(a)) because "it does not necessarily require proof that a defendant engaged in any affirmative use of "physical force" against another person."

### Sixth Circuit

- [Raja v. Sessions](#)

No. 17-3502, 2018 WL 3978255 (6th Cir. Aug. 21, 2018) (Controlled Substances; Divisibility)

The Sixth Circuit denied the PFR, upholding the Board's determination that Raja was inadmissible under section 212(a)(2)(A)(i)(II) of the Act due to his 1996 conviction for possession with intent to deliver a controlled substance, in violation of 35 Pa. Cons. Stat. § 780-113(a)(30). The Board properly concluded that the statute was divisible because the identity of the controlled substance is an element of the offense and properly consulted the record of conviction in applying the modified categorical approach.

### Seventh Circuit

- [W.G.A. v. Sessions](#)

No. 16-4193, 2018 WL 3979276 (7th Cir. Aug. 21, 2018) (Asylum-Nexus; Convention Against Torture)

The Seventh Circuit granted the PFR and remanded, concluding that the petitioner identified a cognizable social group (nuclear family) and that the record compels the conclusion that the Mara 18 persecuted him on account of his membership in it. The court declined to grant the Attorney General's request for a general remand. It also declined to give Chevron deference to the Board's social distinction and particularity requirements. The Court ruled that the IJ and the Board applied the wrong legal standard for Convention Against Torture protection when they found that the petitioner had not shown government acquiescence, and they "ignored key evidence."

- [Rivas-Pena v. Sessions](#)

No. 18-1183, 2018 WL 3977123 (7th Cir. Aug. 21, 2018) (Convention Against Torture)

The Seventh Circuit granted the PFR and remanded, concluding that substantial evidence does not support the IJ and Board decisions denying Rivas-Pena's application for Convention Against Torture deferral where Rivas-Pena fears returning to Mexico because members of the Los Zetas cartel would consider him responsible for the loss of money and drugs worth half a million dollars and where his expert witness opined that it is "a very high to near certainty" that he will be tortured and killed if returned to Mexico.

- [Bijan v. United States Citizenship & Immigration Servs](#)

No. 17-3545, 2018 WL 3968884 (7th Cir. Aug. 20, 2018) (Naturalization)

The Seventh Circuit affirmed the district court's summary judgment entered in favor of

USCIS. USCIS had denied Bijan's naturalization application for lack of good moral character where Bijan failed to disclose on his visa application that he had two children and later lied about that omission

## Ninth Circuit

- [Nguyen v. Sessions](#)

No. 17-70251, 2018 WL 4016761 (9th Cir. Aug. 23, 2018) (Cancellation)

The Ninth circuit granted the PFR, holding that Nguyen's admitted use of cocaine did not trigger the stop-time rule under section 240A(d)(1) of the Act; therefore, he is eligible to apply for cancellation of removal. Nguyen's admission did not render him inadmissible because "a lawful permanent resident cannot be 'rendered inadmissible' unless he is seeking admission."

- [Lopez v. Sessions](#)

No. 15-72747, 2018 WL 4000256 (9th Cir. Aug. 22, 2018) (Controlled Substances; Aggravated Felony)

The Ninth Circuit denied the PFR, holding that Lopez's 1996 conviction of possession for sale of cocaine salt in violation of California Health & Safety Code § 11351 was for an aggravated felony under the modified categorical approach. The court also held that Lopez's expunged conviction is not subject to exception under the Federal First Offender Act because he was convicted of possession for sale of a controlled substance. The court also determined that Lopez was ineligible for a 212(c) waiver because he was convicted of an aggravated felony after the effective date of § 440(d) of the Antiterrorism and Effective Death Penalty Act. The court further concluded that substantial evidence supports the Board's decision denying Lopez's application for Convention Against Torture deferral where his "contentions regarding his fears of returning to Mexico were not sufficiently particularized" and the "evidence did not provide a sufficient basis to conclude that any harm to Lopez would rise to the level of torture."

- [United States v. Vasquez-Gonzalez](#)

No. 15-10285, 2018 WL 4000253 (9th Cir. Aug. 22, 2018) (Crime of Violence; Aggravated Felony)

The Ninth Circuit affirmed a conviction for illegal reentry into the United States in violation of 8 U.S.C. § 1326, holding that "[F]rom its enactment in 1993 to its amendment in 2011, California Penal Code § 245(a)(1) (assault with a deadly weapon or instrument other than a fire arm or by means of force likely to produce great bodily injury) was categorically a crime of violence as defined in 18 U.S.C. § 16(a)."

- [Dent v. Sessions](#)

No. 17-15662, 2018 WL 3945547 (9th Cir. Aug. 17, 2018) (Citizenship; Crime of Violence)

The Ninth Circuit affirmed the district court's summary judgment entered in favor of the Attorney General on the question of Dent's due process and equal protection claims related to the citizenship determination. The Court also granted the PFR, holding that the Board erred in concluding that the offense for third degree escape, in violation of Arizona Revised Statutes § 13-2502 is a crime of violence because it does not necessarily involve the "physical force" required by 18 U.S.C. § 16(a).

- [United States v. Guizar-Rodriguez](#)

No. 16-10507, 2018 WL 3945540 (9th Cir. Aug. 17, 2018) (Crime of Violence; Aggravated Felony)

The Ninth Circuit affirmed a conviction for illegal reentry into the United States in violation of 8 U.S.C. § 1326, holding that battery committed with the use of a deadly weapon under Nevada Revised Statute § 200.481(2)(e)(1) is categorically a crime of violence as defined in 18 U.S.C. § 16(a).

## **Eleventh Circuit**

- [Alcide v. U.S. Attorney Gen](#)

No. 17-14395, 2018 WL 3914701 (11th Cir. Aug. 15, 2018) (unpublished) (212(h) waiver; Discretion)

The Eleventh Circuit denied the PFR, finding the petitioner's legal questions to be without merit. In affirming the IJ's discretionary denial of her 212(h) waiver application, the Board properly considered (1) the positive discretionary factors; (2) the hearing evidence to determine her role in the tax fraud scheme; and (3) rehabilitation.